

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

DONALD CRAIG MILLER §
VS. § CIVIL ACTION NO. 1:04cv802
WARDEN R. D. MILES, ET AL. §

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Donald Craig Miller, a federal prisoner confined at the United States Penitentiary in Beaumont, Texas, proceeding *pro se*, filed this civil rights action pursuant to *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), against Warden R. D. Miles, Captain S. Fauver, Lieutenant K. Russo, Lieutenant P. Townsend, and Disciplinary Hearing Officer Larry Weston.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends dismissing the case without prejudice.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). Plaintiff contends that he tried to exhaust administrative remedies, but was unable to complete the process because the warden did not provide him with a written response to the grievance. Prison regulations provide that, if an inmate does not receive a response within the time allotted for reply, the inmate may consider the absence

of a response to be a denial at that level. 28 C.F.R. § 542.18. When the plaintiff did not receive a timely reply, he should have proceeded to the next level of the grievance procedure. Instead, he did nothing. Therefore, after careful consideration, the court concludes the objections are without merit.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 18th day of January, 2006.

Marcia A. Crone

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE